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Voter Identification Laws in the 2012 Election

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Vivette Applewhite's case before the Pennsylvania State Supreme Court revolves around newly-passed voter identification laws that her lawyers argue create obstacles for eligible voters wishing to exercise their right to cast a ballot on Election Day. Ms. Applewhite's life spans seventeen presidencies. She witnessed the Civil Rights Movement first-hand, marching alongside Martin Luther King, Jr.⁴⁴

Now, her case stands as one of the most controversial election law cases since the beginning of the Civil Rights Movement.

Proponents of voter identification laws argue that the proposed measures will decrease voter fraud. Opponents argue that such measures are obstacles that will make voting more difficult for people of certain demographic groups. Ms. Applewhite contends that the new voter identification laws will keep eligible voters, like her, from the polls. This controversy has occupied news headlines for months. Questions surrounding the

⁴⁴ Curtis, Mary C. "The 93-Year-Old Face of Pennsylvania Voter ID Law." *The Washington Post*, August 16, 2012, Politics section, http://www.washingtonpost.com/blogs/she-the-people/post/the-93-year-old-face-of-pennsylvania-voter-id/2012/08/16/ed4b3b06-e7d8-11e1-9739-ccf99c5fb285_blog.html (accessed September 18, 2012).

impact of voter identification laws on the 2012 election remain. The political, social, and economic ramifications of the new laws require scrutiny.

In many states, these voter identification laws had little bearing because the political culture determines which candidate will receive its electoral votes long before Election Day. Therefore, discussion focuses on Pennsylvania and Florida; states that recently passed new voter identification laws, and in previous elections showed no clear, consistent pattern in voting with either political party.

Numerous questions regarding the purpose and impact of these laws on people like Viviette Applewhite remain. It is possible that without judicial approval, and a lack of enforcement, the new voting laws in Pennsylvania and Florida had little political or social impact on the 2012 elections. Concerns regarding

their influence on the 2012 elections may have proven premature, but, if the issue is left unattended, the ramifications could be great for the 2016 elections and beyond.

The rationale behind the passage of new voter identification legislation must be considered. To begin, Republicans, who control both Houses of the state legislatures, as well as the governorship in both Pennsylvania and Florida, argue that such legislation is necessary for protecting the integrity of elections from voter fraud. They claim that such fraud could unfairly influence results. Democrats, on the other hand, believe that such legislation intends to disenfranchise specific demographic groups of voters who traditionally favor Democrats. More often than not, these demographics represent the African-American and Hispanic communities. Democrats argue that this type of legislation prohibits American citizens from exercising their constitutional right

to vote, thus tainting the electoral process. They also argue that this legislation was passed in an effort to swing the 2012 elections in favor of Republican candidates, especially Mitt Romney.

While Republicans never state this as their intention, evidence hints that there may be ulterior motives to this legislation. In a meeting with the Republican State Committee on June 23, 2012, Pennsylvania's House Republican leader Mike Turzai spoke to the audience on the Republicans' successes. During that address, he said, "Voter ID, which is gonna allow Governor Romney to win the State of Pennsylvania, done."⁴⁵ Spokesmen for the Assemblyman quickly dismissed this as being taken out of context, insisting Turzai had

been referring to eliminating voter fraud. While this may be true, taking this quote at face value introduces a controversial aspect to the discussion on voter identification legislation.

The fact that some Republican lawmakers wish to protect against voter fraud may be sincere. At the same time, as Democrats argue, such legislation may prevent those legally registered to vote from doing so because of the undue burden it places on them. Minorities, especially those in urban areas, are less likely to have the required forms of identification. The steps required place a burden on citizens who have to obtain the required identification. Opponents argue that these laws present a new poll tax on minority voters. The requirements necessary to obtain identification require time and money, and might, therefore, discourage these groups from participating in the electoral process.

⁴⁵ Weinger, Mackenzie. "Mike Turzai: Voter ID Helps GOP Win State." Politico, June 25, 2012, <http://www.politico.com/news/stories/0612/77811.html> (accessed November 29, 2012).

This could lead to the potential disenfranchisement of entire groups of voters, violating the Voting Rights Act of 1965.

Statistically, Hispanics and African-Americans, who, according to Democrats, are less likely to have the proper forms of identification, vote overwhelmingly for Democratic candidates. In the 2008 Presidential Election, Barack Obama won 67% of the Hispanic vote and 95% of the African American vote.⁴⁶ Using the current data from the United States Census Bureau these figures are put into proper perspective. Of Pennsylvania's 12,702,379 residents, 1,377,689 identify themselves as African-American and 719,660 identify themselves as Hispanic or Latino. The Census Bureau reports that out of a total population of 18,801,310 2,999,862 Floridian

residents identify themselves as African-American and another 4,223,806 respond as Hispanic or Latino. In these states, minority groups represent a substantial percentage of the population. These groups are sizable enough that the support of one of these demographics could throw an election to a specific candidate or party. This disenfranchisement of large numbers of voters, and the racial implications, provides Democrats with a sense of legitimacy in their efforts to see these laws overturned.

Indeed, voter fraud exists in many forms. Recent legislation introduced and passed by Republicans is intended to fight registration fraud, absentee-ballot fraud, ballot-casting by ineligible voters (such as felons and non-citizens), double-voting, and voter impersonation. When Carnegie-Knight, an investigative reporting service, analyzed the 2,068

⁴⁶ Schorow, Stephanie. "The Role of Race." MIT News, January 20, 2009, <http://web.mit.edu/newsoffice/2009/racialpolarization-0120.html>

allegations of voter fraud since 2000, they found only ten confirmed cases of voter impersonation; amounting to one case for every 15 million voters.⁴⁷ According to the same report, a majority of voter fraud cases revolved around registration fraud or absentee-ballot fraud. While protecting the integrity of elections is important, the numbers, both in terms of cases of voter fraud and the number of voters disenfranchised, put the Republican argument at a disadvantage.

Voter identification is not a new concept. Great Britain plans to implement full voter identification for their 2014 elections. Up to this point, the head of the household

would register all family members to vote, with no identification requirements. Britain intends to have all voters register themselves, providing a signature, date of birth, and national insurance number to confirm identification. Further checks between different government organizations will be used to confirm a person's identity.⁴⁸ Voter registration numbers are far higher in Great Britain, with various reports estimating that 91-92% of the population is currently registered. No disenfranchisement controversy similar to that in the United States has arisen.

In addition to Britain, several other nations, including Switzerland, Canada, Sweden, and India require voters to present proof of identify when voting. For many of these nations, citizens may present

⁴⁷ Khan, Natasha, & Carson, Corbin. "Election Day Impersonation, an Impetus for Voter ID Laws, a Rarity, Data Show." *The Washington Post*, August 11, 2012, Politics section, http://articles.washingtonpost.com/2012-08-11/politics/35494053_1_voter-id-laws-registration-fraud-voter-impersonation (accessed November 29, 2012).

⁴⁸ "Individual Voter ID Plan Brought Forward to 2014." BBC News. <http://www.bbc.co.uk/news/uk-politics-11312362> (accessed December 6, 2012).

several forms of identification. For example, voters in India have a choice of fifteen forms of identification. Canada allows voters to show two forms of identification out of a list of 45 options.⁴⁹ Voters in Spain, Greece, France, Malta, Belgium, and Italy provide citizens with national identity documents, automatically ensuring all citizens have the necessary identification.⁵⁰ While requirements are less rigid than those proposed in the United States, the prevalence of voter identification laws in other nations, and the fact that these nations have greater voter registration percentages than the United States further contribute to the debate.

⁴⁹ Khazan, Olga. "Voter ID Proponents Point to Laws in Other Countries." *The Washington Post*, July 12, 2012, World section, http://www.washingtonpost.com/blogs/blogpost/post/voter-id-proponents-point-to-laws-in-other-countries/2012/07/12/gJQAVIGCfW_blog.html (accessed December 6, 2012).

⁵⁰ Ibid

Courts in the United States are seeing a great deal of activity on this issue. On May 19, 2011, the Florida State Legislature adopted HB 1355 into law. This law established and clarified several key points regarding voter identification and registration. It required that all voters present "valid picture identification" at the polling place. Therefore, a person must present a valid Florida driver's license, identification card, passport, debit or credit card containing a photograph, military or student identification, retirement center identification, or identification from a neighborhood association or public assistance.⁵¹ Furthermore, Florida requires that the picture identification contain the elector's signature. If the identification lacks a signature, the voter must provide additional forms of identification containing a

⁵¹ Florida. *Florida Election Code – HB 1355*. (62-63). *Laws of Florida*. 2011. HB 1355. (2011).

signature.⁵² The purpose of such measures, according to the law, is to prevent non-citizens from voting by confirming the identity of the voter.

The controversies surrounding Florida's voter identification codes are not about the identification clauses, but rather about third-party voter registration and verification of citizenship. New statutes require that these organizations submit the registration information they collect within 48 hours. Failure to do so translates to a fine and potentially having the completed registration forms voided.⁵³ Such legislation caused friction between the state and different organizations, including the League of Women Voters, the National Association for the Advancement of Colored People

(NAACP), Rock the Vote, and even high-school teachers.⁵⁴

Additionally, Florida's Republican Governor Rick Scott sought to remove all ineligible voters from voter registries. When examined, the voter registries in several counties contained the names of voters who had died several years earlier and those of people whose citizenship was questionable. These tasks created controversies that led to legal suit in Floridian courts. These cases include *Arcia v. Detzner*, *League of Women Voters of Florida v. Browning*, *Holder v. Florida*, and *Florida v. US*.

The case of *The League of Women Voters of Florida v. Browning* centers on the section dealing with third-party voter registration. Traditional third-party registration allows for a streamlined process for individuals who may not have registered otherwise. The League of Women Voters filed their suit

⁵² Ibid. Florida

⁵³ Florida. *Florida Election Code – HB 1355*. (62-63). *Laws of Florida*. 2011. HB 1355. (2011).

⁵⁴ Abdullah, Halimah. "Florida's Voting Standoff Deja Vu?." CNN.

claiming these requirements “unconstitutionally and unlawfully burden their efforts...to encourage civic engagement and democratic participation,” citing the National Voter Registration Act of 1993.⁵⁵ The Courts agreed, allowing no fewer than 10 days for third-party registration organizations to submit the registration forms they collected.

Florida has a history of adjustments to voting procedures that tend to disenfranchise certain voting demographics. The same man who drafted HB 1355, Emmett Mitchell IV, wrote legislation in 2000 which intended to rid voting rolls of convicted felons. The stated goal of the legislation was to prevent those ineligible to vote from doing so. However, the names of thousands of citizens with clean criminal records were purged as well. Later it was found that most of the names

wrongfully purged, and therefore denied the right to vote, were African-Americans. Amidst the public outcry that ensued, Mitchell was subsequently called to testify before the US Civil Rights Commission.⁵⁶

In the case *Arcia v. Detzner*, the plaintiffs sought an injunction for a program titled “Processing Ineligible Registered Voters-Non Immigrants.” The program was initiated by Republicans in Florida, with the intent of removing ineligible voters from voter rolls. The plaintiffs charged that this act allowed minorities, specifically African-Americans and Hispanics, “less opportunity than other members of the electorate to participate in the political process

⁵⁵ League of Women Voters of Florida v. Browning. 4:11-cv-00628-RH-WCS. (United States District Court, Northern District of Florida, 2011.)

⁵⁶ Kim, Dara, & Lantigua, John. "Architect of Felon Voter Purge Behind Florida's New Limits." *The Palm Beach Post*. <http://www.palmbeachpost.com/news/news/state-regional-govt-politics/architect-of-felon-voter-purge-behind-floridas-new/nSp9t/> (accessed November 12, 2012).

and to elect the representative of their choice,” which violates the Voting Rights Act of 1965.⁵⁷ An initial list of 182,000 voters yielded 2,700 names of individuals whose citizenship status raised questions. The state notified these individuals, explaining that they must prove their citizenship within 30 days or be removed from registration rolls. A disproportionate number (87%) were minorities.⁵⁸ Out of the 2,700 suspicious names, fewer than ten names were illegally on voter rolls. Despite the low number of names eligible for removal judges in Florida affirmed that Governor Scott could clear voter rolls of ineligible electors in order to maintain the integrity of

elections.⁵⁹ Arcia, the plaintiff, appealed this court’s ruling to the Circuit Court of Appeals, where the case currently sits awaiting further action. An additional, similar case, *Mi Familia Vota Education Fund v. Detzner*, is set to appear before Florida courts in August of 2013.

The purge by the State of Florida yielded two additional lawsuits, *Holder v. Florida* and *Florida v US*. The United States Department of Justice filed suit against the State of Florida on the grounds that the proposed purge violated two federal voting laws from the National Voter Registration Act of 1993 and the Voting Rights Act of 1965.⁶⁰

⁵⁷ Arcia v. Detzner, 12-22282-CIV-ZLOCH. (United States District Court, Southern District of Florida, 2012.)

⁵⁸ Weiner, Rachel. "Florida Voter Purge Explained." *The Washington Post*.
http://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvNIV_blog.html (accessed November 4, 2012).

⁵⁹ Mazzei, Patricia. "Judge: Florida Voter Purge Can Go On." *The Miami Herald*.
<http://www.miamiherald.com/2012/10/04/3034949/judge-florida-voter-purge-can.html> (accessed November 12, 2012).

⁶⁰ Bennett, George, & Kim, Dara. "Feds, Florida in Dueling Lawsuits Over Voter Purge." *The Palm Beach Post*.
<http://www.palmbeachpost.com/news/news/state-regional-govt-politics/florida->

Concurrently, Florida's Secretary of State, Ken Detzner, who oversees all election-related issues, sued the United States Department of Homeland Security. Detzner filed suit against the Department for denying Florida access to a federal database containing information on immigrants, which could have eliminated the incorrect purging of legally registered voters⁶¹.

Like Florida, Pennsylvania signed into law its own voter identification measures on March 14, 2012. Pennsylvania's HB 934 states that voters must present a valid identification card with the voter's photograph (unless prevented by religious obligation) and the name of

the voter. Other acceptable forms of identification include proof of U.S. military service from the Commonwealth of Pennsylvania, a municipally or federally-issued form of identification, a document from a college or university within Pennsylvania, or a care facility within the state's borders. Requirements for obtaining valid identification necessitate access to one's social security number, a current bank statement, utility bill, or check. If these requirements still cannot be met by the voter, a signed statement must be presented noting the elector lacks proof of identification. A voter may be cast by provisional ballot. Still, the individual in question must appear before an election board to confirm voter authenticity.⁶² If they fail to do so within 6 days of the election, the ballot is thrown out.

sues-us-for-homeland-security-database-tha/nPQ9z/ (accessed November 12, 2012).

⁶¹ Ross, Janell. "Rick Scott: Florida Suing Federal Government Over Voting Purge." *The Huffington Post*. http://www.huffingtonpost.com/2012/06/11/rick-scott-florida-suing-government-voter-purge_n_1588012.html (accessed November 12, 2012).

⁶² Pennsylvania. *Pennsylvania Election Code – Omnibus Amendments Act. Laws of Pennsylvania*. 2012. HB 934. (2012).

In Pennsylvania, the timing, not the law itself, created the most controversy. Having passed in mid-March, the State needed to provide the acceptable forms of identification for all who sought them in a period of less than eight months (for purposes of the November 6, 2012 General-Presidential Election). Many of those lacking proper identification fell into minority or elderly demographics. Issues like these prompted critical reactions to the law passed by the Republican-controlled State Legislature. Republican Governor Tom Corbett countered by estimating that, of the state's 8.3 million registered voters, 99% already possess the identification required.⁶³ The court cases filed as a

result of the law's passing centered on the lengthy process required to obtain such identification. Certain groups, and others less financially stable, may not be able to afford the time or costs directly or indirectly associated for proper registration. The elderly with transportation or mobility difficulties, like Viviette Applewhite, may also be at a disadvantage.

The primary case filed in the Pennsylvania State Court is *Applewhite v. Pennsylvania*. Viviette Applewhite had had her purse stolen, and with it her Social Security card and driver's license. Without either of these documents, she cannot apply to renew her license and therefore cannot vote. Ms. Applewhite, and others who felt disenfranchised due to new voter identification procedures filed suit in Pennsylvania Courts in July 2012. They challenged the ability of the

⁶³ Gerhart, Ann. "PA.'s New Voter ID Law Sends Non-Drivers on a Bureaucratic Journey." *The Washington Post*, September 16, 2012, Campaign 2012 section, <http://www.washingtonpost.com/politics/decision2012/for-some-pennsylvanians-voter-id-quest-is-an-ordeal/2012/09/16/758d4f52-0027->

11e2-b260-32f4a8db9b7e_story.html (accessed September 18, 2012).

state to distribute voter identification cards in a timely manner for purposes of the General Election. They argued that the steps necessary for obtaining the proper forms of identification violate the XXIV Amendment and represent a manifestation of a new poll tax, designed to keep certain demographics from participating in the electoral process.

At the time, estimates of those lacking the necessary identification in Pennsylvania totaled over 758,000, with more than 186,000 residing in Philadelphia.⁶⁴ The State Department countered that the possibility exists that these voters, while they lack the designed PennDOT identification card, may possess other forms of identification suitable for voting purposes. While that may be true, 758,000 proved to

be too large of a number to ignore. In his opinion, Judge Robert Simpson acknowledged the difficulty of distributing identification cards to all those needing it. He said, "I expected more IDs to have been issued by this time. For this reason, I accept the Petitioner's argument that in the remaining five weeks before the general election, the gap between the photo IDs issued and the estimated need will not be closed." Judge Simpson continued, noting the issues surrounding the state's proposed legislation, "The proposed changes are to occur about five weeks before the general election, and I question whether sufficient time now remains to attain the goal of liberal access."⁶⁵ Even Republican advocates for the new law admitted that unforeseen issues would arise in the implementation phase.⁶⁶ This resulted in the overwhelming feelings that that the State of

⁶⁴ "Applewhite v. Commonwealth." Public Interest Law Center of Philadelphia. <http://pilcop.org/applewhite-v-commonwealth/> (accessed November 9, 2012)

⁶⁵ Applewhite v. Pennsylvania, No. 330 M.D. (Penn. Comm. 2012)

⁶⁶ Ibid

Pennsylvania would fail to accommodate potential voters who request identification cards in time before the 2012 Presidential Election.

On October 22, 2012, only fifteen days before Election Day, judges ruled that an injunction was necessary to prevent voter disenfranchisement. Workers at the polls could ask voters to produce identification, but could not prevent electors from casting a ballot. To prevent any practices from disenfranchising voters who could not produce photo identification voted using a provisional ballot. This allowed the elector to confirm their identity to the county board of elections through alternative means within six days of the election.⁶⁷ As in Florida, should the prospective voter fail to do so, the provisional ballot was destroyed and not counted.

⁶⁷ *Applewhite v. Pennsylvania*, No. 330 M.D. (Penn. Comm. 2012)

The fact that the courts barred each state's law from being enforced for the 2012 Presidential Election, save Florida's right to have those 2,300 individuals confirm their identity before voting, means that there was almost no direct and immediate impact on the electorate's ability to exercise their right to cast a ballot in 2012. One must note that, in each court case the identification requirement itself was not the primary focus. Rather, other logistical issues prevented the implementations of these statutes. An examination of the effects of these laws, had they not been struck down by the courts, will provide some insight on future election cycles.

Facts and figures regarding the effects of voter identification laws vary. Several surveys conducted by various entities and interest groups attempt to gauge the impact of such newly-passed laws. According to the *Wall Street Journal*,

one survey, conducted in 2006 by New York University's Brennan Center for Justice, found that 11% of the electorate lack the necessary photo identification required to vote. Assuming the sample population accurately represents the United States' population, this survey implies that 21 million people would have been turned away at the polls on November 6th. However, studies carried out in Indiana, Maryland, and Mississippi by the Center for Democracy and Election Management reported that only about 1.2% of registered voters lacked the required credentials.⁶⁸ The difference of about 10% between the two sources shows that there is no reliable data on which to accurately predict the true ramifications of these laws. This is a reoccurring theme for the voter identification issue. Often, each organization has

its own opinion on the topic, and such biases are reflected in the data collection and the publication of findings. As such, the true implications of these laws are difficult to discern.

The Public Interest Law Center of Philadelphia estimates that at least 9% of the eligible voting population in Pennsylvania lacks the identification necessary to cast a ballot.⁶⁹ There are no estimates from conservative leaning advocacy groups. Reports hint that the legislation was passed without any research into the number of people that will potentially be affected or the timeframe needed for complete implementation.⁷⁰

⁶⁹ "Applewhite v. Commonwealth." Public Interest Law Center of Philadelphia. <http://pilcop.org/applewhite-v-commonwealth/> (accessed November 9, 2012)

⁷⁰ Barnes, Robert. "Tidying Up the 2012 Election." *The Washington Post*. <http://www.washingtonpost.com/politics/tidying-up-the-2012-election/2012/11/25/03ace924->

⁶⁸ Bialik, Carl. "Impact of States' Voter Laws Can Be Difficult to Identify." *The Wall St. Journal*, October 20, 2012, A5 edition

Nate Silver, who operates the election blog fivethirtyeight.com for *The New York Times*, attempted to find a middle-ground for Pennsylvania. Mr. Silver established himself as a credible pundit due to his use of mathematical formulas to accurately predict the voting outcome of 99 out of 100 states over the past two Presidential Elections. As such, his estimates can be used and assumed to be free from bias. Silver argues that the estimated disenfranchisement of 750,000 voters as a result of the new legislation is too high for several reasons. First, people may be entered twice in databases as a result of name changes. For example, a woman might appear twice on voter lists because she reregisters after taking her husband's name in marriage. This survey also fails to account for those who may have other forms of acceptable

identification, like a passport, which would still allow them to vote.

Finally, human error in the form of erratic enforcement by poll workers and use of provisional ballots decrease the initial 750,000 estimate from the State of Pennsylvania. Instead of 9% disenfranchisement, as the Public Interest Law Center of Philadelphia initially estimated, Silver estimates these laws will "prevent something like 2 or 3 percent of registered voters from actually casting a ballot."⁷¹ Going further, Mr. Silver estimated that voter turnout in Pennsylvania would decrease by 2.4%, reducing Barack Obama's estimated margin of victory over Mitt Romney. As of July 15th, when the article was published, Silver estimated this legislation would

33f3-11e2-bfd5-e202b6d7b501_story.html (accessed November 29th, 2012).

⁷¹ Silver, Nate. "Measuring the Effects of Voter Identification Laws." fivethirtyeight.com. <http://fivethirtyeight.com/2012/07/15/measuring-the-effects-of-voter-identification-laws/> (accessed November 29th, 2012).

reduce Mr. Obama's victory margin by 1.2%. While this still represents a significant figure, Silver notes that, according to his calculations, Mr. Obama's chance for victory falls only 1.6%, down to 82.6% from 84.2%.⁷²

A 2.4 % change in voter turnout could carry huge implications on races in swing states, especially in states like Ohio, which, according to *The Huffington Post*, was won by only 107,000 votes, or 2.0% percent.⁷³ The proposed legislation created a media firestorm. Stories and updates on this legislation and its possible ramifications filled newspapers, television news networks, and radio airwaves with hundreds of stories and hours of airtime. Such exposure increased

voter awareness on the issue. This prompted some of those who lacked the required forms of identification to seek it. Democrats and minorities, feeling they were being disenfranchised, turned out to vote in numbers greater than in the 2008 Presidential Election. According to an article written by Jerry Markon for *The Washington Post*, Florida had an *increased* turnout among Hispanic voters.⁷⁴

Legislators and judges from both sides of the political divide agree that enhanced voter identification laws represent the future for electoral policy within the United States. Before handing down his decision against the enforcement

⁷² Ibid

⁷³ Boice, Jay, Bycoffe, Aaron, Scheinkman, Andrei, Carlson, Adam, & Sledge, Matt. "Ohio Election Results." *The Huffington Post*. <http://elections.huffingtonpost.com/2012/results/ohio> (accessed December 3, 2012).

⁷⁴ Markon, Jerry. "Despite New ID Laws, Election System Performed Well, Experts Say." *The Washington Post*, November 7th, 2012, Campaign 2012 section, http://www.washingtonpost.com/politics/decision2012/despite-new-id-laws-election-system-performed-well-experts-say/2012/11/07/8829e310-2902-11e2-96b6-8e6a7524553f_story.html (accessed November 29, 2012).

of voter identification laws in Pennsylvania for the 2012 Presidential Election, Judge Seamus P. McCaffery, who was elected as a Democrat, wrote "...I have no argument with the requirement that all Pennsylvania voters, at some reasonable point in the future, will have to present photo identification before they may cast their ballots."⁷⁵ The fact that such a high number of developed nations require identification at the polls places pressure on the United States to catch up. Supreme Court Justice Samuel Alito, in a 2005 case involving voter identification laws in Indiana noted, "If [election fraud] is not a problem at all, how do you account for the fact that the Commission on Federal Election Reform...recommended a voter ID requirement, and many other countries around the world have

voter ID requirements?"⁷⁶ While enhanced voter identification requirements may be in the near-future for the United States, something must be done so that these laws can be enforced uniformly and without any hints of discrimination, like they are done in England and other nations.

Strict voter identification laws already exist in a handful of states. States like Florida and Pennsylvania could look to states like, Kansas, Indiana, Tennessee, and Georgia, to learn how to successfully implement new voter identification laws. The State of Kansas requires all prospective voters to present a valid form of identification that contains a photograph unless the individual receives an exemption due to

⁷⁵ *Op. Cit. Applewhite v. Commonwealth of Pennsylvania*

⁷⁶ Khazan, Olga. "Voter ID Proponents Point to Laws in Other Countries." *The Washington Post*, July 12, 2012, World section, http://www.washingtonpost.com/blogs/blogpost/post/voter-id-proponents-point-to-laws-in-other-countries/2012/07/12/gJQAVIGCfW_blog.html (accessed December 6, 2012).

physical or health conditions that make travelling impossible, current military service outside of the state, or if religious reasons prevent a voter from having a photograph taken. Much like the proposed legislation in Pennsylvania, if a voter cannot present such a form of identification at the polling place, a provisional ballot is used, and the prospective voter must then confirm his or her identity in order for the vote to count.⁷⁷

In Georgia, the procedures are the same. Provisional ballots are used, with the voter required to confirm their identity with the county registrar's office within three days for the vote to count.⁷⁸ Legal codes in Tennessee and Indiana match those in Kansas and Georgia; save for differences in the amount of time an elector has to confirm his or

her identity for the provisional ballot to count.

The same arguments used against the proposed legislation in Pennsylvania were used in all other states that have passed similar laws. However in Kansas, the Secretary of State, Kris Kobach, released television and radio public service announcements to educate the public. When a man confined to a motorized scooter found his driver's license had expired as he went to vote in the Kansas Primary Elections in August of 2012, the county clerk sent an elections official to his home with the equipment necessary to make the identification card. After filling out paperwork and having his picture taken, the man had his new identification card, one that would allow him to vote in November's election without issue.⁷⁹

⁷⁷ Kansas. *Secure and Fair Elections Act – HB 2067*. *Laws of Kansas*. 2011. HB 1355. (2011).

⁷⁸ Georgia. *O.C.G.A § 21-2-417*. *Laws of Georgia*. 2006.

⁷⁹ Carter, Maria. "Kansas Voter ID Laws Faces Biggest Test." KCUR.org. <http://www.kcur.org/post/kansas-voter-id-law-faces-biggest-test> (accessed

Amidst the initial assertions from critics, Georgia also found no issues of disenfranchisement as a result in stricter identification requirements. While African-Americans usually total 23-25% of voter turnout, 30.06% of registered African-American voters cast their ballots in 2008.⁸⁰ Furthermore, according to the *Atlanta Journal-Constitution*, since 2008, only 1,586 votes have gone uncounted. This number strictly represents the situation where voters filled out provisional ballots, but never confirmed their identity afterwards. In that time, Georgians have cast over 13.6 million votes, leaving just

.01% of votes discarded.⁸¹ Despite the statistical evidence that no disenfranchisement occurred after the new voter identification requirements were implemented, the legislation continues to come under fire, with new challenges filed in the courts every year. Likewise, legislation from both Indiana and Tennessee faced several legal challenges since its passage and implementation. Nevertheless, the courts (and in Indiana's case, the United States Supreme Court) have upheld the laws.

Despite his short-term objections to the voter identification laws in Pennsylvania, Judge Robert Simpson suggested some improvements that could provide for a smoother transition for

December 1, 2012).

⁸⁰ Hood III, M.V. and Charles S. Bullock III. "Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute." *State Politics and Policy Quarterly* 12 (2012), <http://spa.sagepub.com/content/12/4/394.full.pdf.html> (accessed December 1, 2012).

⁸¹ McCaffrey, Shannon. "Despite Voter ID Law, Minority Turnout Up in Georgia." *The Atlanta Journal-Constitution*, September 3, 2012, News section, <http://www.ajc.com/news/news/despite-voter-id-law-minority-turnout-up-in-georgi/nR2bx/> (accessed December 9, 2012).

enforcement in the 2016 elections. Among these improvements are “streamlined procedures for validating birth dates, improved scheduling of individuals manning the DOS Help Desk, a more structured referral system for complex Help Desk Inquiries, and some extended hours at PennDOT Drivers Licensing Centers.” Simpson continues, “These existing structural improvements, together with the proposed enhanced access to the DOS ID and additional time, will place the Commonwealth in a better position going forward.”⁸² With the proper programs implemented, Pennsylvania, and the rest of the United States, could ensure that all voters have proper identification for the next election cycle.

Distributing identification cards will be most effective and efficient at the lowest levels of government. For this reason, each

state government can assign the task of registering prospective voters with the correct forms of identification to each county. Counties serve far fewer people than state governments. Therefore, registration would run much more smoothly at this level. This is not to say that these efforts will come without *cost* to the state. Since no burden can be placed on the elector during the process of obtaining identification, the state must pick up the tab. The state would also pay the costs for government employees to staff distribution events. This could include mailings to eligible voters, organizing and running voter drives in various locations throughout the county, and possibly, door-to-door solicitations.

As a comparison, the initial procedures implemented in England for mandating voter identification for the 2014 elections would cost £74 million, or roughly \$120

⁸² *Applewhite v. Pennsylvania*, No. 330 M.D. (Penn. Comm. 2012)

million.⁸³ This number is for the entire nation of Great Britain, which, according to the World Bank, totals nearly 63 million individuals. Costs for similar implementation within the United States must be considered in proportion to the population and size of each individual state. Possible ways to cut costs include the use of volunteer personnel. Having volunteers run voter drives eliminates many labor costs the states would otherwise incur. In general, these could be run in the same manner as third-party voter registration drives, and could allow for many members of the electorate to be served at a relatively low cost.

Further efforts from various other governmental organizations could facilitate this process as well. The Department of

Motor Vehicles could assist in educating the population of the identification requirements in coordination with the issuance of drivers' licenses. The U.S. Citizenship and Immigration Services, who control and carry out the naturalization process for prospective citizens, could aid this effort as well. They could provide a means to file the proper forms to obtain identification at the same time as new citizens take the oath of citizenship. These methods will contribute to an infrastructure for voter registration and identification that would allow the electoral process to run smoothly and efficiently.

Should these or other similar methods be carried out effectively, Florida and Pennsylvania could see the implementation of voter identification laws that maintain the integrity of elections without creating an undue burden

⁸³ "Individual Voter ID Plan Brought Forward to 2014." BBC News. <http://www.bbc.co.uk/news/uk-politics-11312362> (accessed December 6, 2012).

for the electorate in their efforts to secure correct identification.

Voter identification legislation in the United States has faced a tumultuous history. In a nation whose history is riddled with instances of discrimination and disenfranchisement over a period of over one-hundred years, any burdensome requirements for casting a ballot will face opposition from a wary public. Florida and Pennsylvania are just the most recent examples. Regardless of the true intentions of each state's legislation, the undue burden of the proposed legislation prevented their enforcement during the 2012 Presidential Election. Since they could not be enforced, they could not influence the election. Had this legislation remained intact, studies show that the effects would have been minimal.

Voter identification laws represent the future for the electoral process. The successful programs in

several states serve as examples for the rest of the United States. Specifically, they provide how to implement such laws without allowing disenfranchisement. Most importantly, implementation of voter identification programs can be done in a manner so that every American can freely exercise their right to vote.